

Montana Water Court  
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**FILED**  
08/22/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
43B-0158-R-2020  
Lambert, Kathryn  
7.00

MONTANA WATER COURT, YELLOWSTONE DIVISION  
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN  
BASIN 43B  
PRELIMINARY DECREE

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CLAIMANTS: Carolyn M. Shimmin; Riley E. Shimmin; Yellowstone  
Trails Ranch Mill Creek Water Users Association;  
Angela D. Bennin Revocable Trust; Cecil A. Bennin  
Revocable Trust

**CASE 43B-0158-R-2020**  
43B 16052-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's finding of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

The ditch identified on the abstract for this claim in the Preliminary Decree is Mill Creek Flat Ditch. During preparation of the Preliminary Decree, the point of diversion legal description was changed to the legal description for Upland Ditch, not for Mill Creek Flat Ditch.

In 2021, the Montana Department of Natural Resources and Conservation [“DNRC”] prepared a new marked aerial photograph for the Mill Creek claimants and the Court to use to determine the correct ditch name and point of diversion legal description.

On June 21, 2023 the Order Re-Opening Case And Setting Filing Deadline was issued to address this error with the claimants. A copy of the new marked aerial photograph was included. On June 27, 2023 Riley Shimmin and Carolyn Shimmin filed their response stating that the ditch historically used for this water right is the Mill Creek Flat Ditch. On July 21, 2023 Angela D. Bennin Revocable Trust and Cecil A. Bennin Revocable Trust filed their response stating that the ditch historically used for this water right is the Mill Creek Flat Ditch. The July 27, 2023 Order Setting Show Cause Filing Deadline states:

Nothing was filed Yellowstone Trails Ranch Mill Creek Water Users Association. The abstract of claim 43B 16052-00 states that the ditch name is Mill Creek Flat Ditch but the point of diversion legal description is for Upland Ditch. The Statement of Claim states that the ditch used is Mill Creek Flat Ditch. The responses filed by the other claimants state that the ditch historically used is Mill Creek Flat Ditch. Therefore, it is

ORDERED that the deadline is **August 28, 2023** for Yellowstone Trails Ranch Mill Creek Water Users Association to file a written statement showing cause why the Court should not change the ditch name to MILL CREEK FLAT DITCH. If not filed by August 28, 2023, the Court will conclude Yellowstone Trails Ranch Mill Creek Water Users Association agrees with this change and will proceed with changing the claim as detailed above.

On August 15, 2023 the copy of this Order mailed to Yellowstone Trails Ranch Mill Creek Water Users Association was returned to the Court with “RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD” added to the envelope by the USPS. Additional research by Judicial Assistant Julie Cristiani found no alternate address. These documents are viewable in the Court’s FullCourt Enterprise case management system.

#### APPLICABLE LAW

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect.

Rule 19, W.R.Adj.R.

FINDING OF FACT

For this claim, the Preliminary Decree states that the point of diversion legal description is the NENENW section 3, T6S, R9E, PARK. The legal description should be the NESWNE section 3, T6S, R9E, PARK. The ditch name is already correctly appearing on the abstract as Mill Creek Flat Ditch.

CONCLUSION OF LAW

The new DNRC marked aerial photograph and the responses filed by Carolyn M. Shimmin, Riley E. Shimmin, Angela D. Bennin Revocable Trust, and Cecil A. Bennin Revocable Trust are sufficient to contradict and overcome the prima facie claim as incorrectly modified prior to issuance of the Preliminary Decree.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Finding of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW**

Service Via USPS Mail:

Carolyn M. Shimmin  
Riley E. Shimmin  
31 Clark Ln  
Livingston, MT 59047

Yellowstone Trails Ranch Mill Creek Water Users Association  
~~% Joe Lamm~~  
~~PO Box 1390~~  
~~Livingston, MT 59047-1390~~  
(Return mail received)

Cecil A. Bennin Revocable Trust  
Angela D. Bennin Revocable Trust  
7 Morgan Trl  
Livingston, MT 59047-8723

**Note: Service List Updated 8-15-23**

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 16052-00 STATEMENT OF CLAIM

**Version:** 5 -- POST DECREE

**Status:** ACTIVE

**Owners:**

RILEY E SHIMMIN  
31 CLARK LN  
LIVINGSTON, MT 59047

CAROLYN M SHIMMIN  
31 CLARK LANE  
LIVINGSTON, MT 59047

YELLOWSTONE TRAILS RANCH MILL CREEK WTR USERS ASSN  
%JOE LAMM  
PO BOX 1390  
LIVINGSTON, MT 59047 1390

BENNIN, CECIL A REVOCABLE TRUST  
7 MORGAN TRAIL  
LIVINGSTON, MT 59047 8723

BENNIN, ANGELA D REVOCABLE TRUST  
7 MORGAN TRAIL  
LIVINGSTON, MT 59047 8723

**Priority Date:** JUNE 4, 1963

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 3.75 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 139.00

**Source Name:** MILL CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNE	3	6S	9E	PARK

**Period of Diversion:** MARCH 15 TO NOVEMBER 30

**Diversion Means:** HEADGATE

**Ditch Name:** MILL CREEK FLAT DITCH

**Period of Use:** MARCH 15 TO NOVEMBER 30

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	74.30		W2SE	18	5S	9E	PARK
2	64.70		E2SW	18	5S	9E	PARK
<b>Total:</b>	139.00						

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**Remarks:**

AUTHORIZATION TO CHANGE ISSUED 06/24/1988 FOR CHANGE IN POINT OF DIVERSION AND PLACE OF USE. NOTICE OF COMPLETION DUE 11/30/1990. SEE 43B 16047-00.

LEASE AUTHORIZATION TO CHANGE THE POINT, PLACE, AND PURPOSE OF USE ISSUED 01/27/1993 TO THE DEPARTMENT OF FISH, WILDLIFE & PARKS. SEE 43B 5862-00.